A GUIDE TO THE MASSACHUSETTS PUBLIC EMPLOYEE COLLECTIVE BARGAINING LAW

INTERNET EDITION

A continually updated version of this guide is available on the Commission's web site at www.mass.gov/lrc.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
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NOTICE

Although we make every effort to verify the accuracy of the information in this Guide, please do not rely on this information without first checking an official edition of the M.G.L. or other listed Acts, and the Code of Massachusetts Regulations.

The *Summary of Decisions* section is reflects the Commission's decisions up to the date printed on the contents page. However, subsequent decisions may affect that information.

If you need legal advice or counsel, please consult an attorney.

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PREFACE

Over the last twenty-five years, the Labor Relations Commission and the Donahue Institute for Governmental Services have jointly published nine editions of the definitive *Guide to the Massachusetts Public Employee Collective Bargaining Law*, commonly referred to as the "Green Book."

Although the overall format of the *Guide* remains unchanged, this edition contains significant changes in substance:

- The *Procedures* section has been updated to reflect new procedures at the Commission.
- M.G.L. c.150A, which covers certain public authorities and their employees, has been added to the *Statutes* section.
- The *Rules & Regulations* section has been updated to reflect changes in the Commission's Rules and Regulations in 1999 and 2000 and the Rules and Regulations of the Board of Conciliation and Arbitration and the Joint Labor-Management Committee have been added.
- The *Summary of Decisions* section has been updated.

We are grateful to the staff of the Donahue Institute for their efforts over the years and, particularly Sharon L. Faherty, who edited the last several editions of the *Guide*. We are also grateful to the staffs of the Board of Conciliation and Arbitration and the Joint Labor Management Committee for their input. Finally, we are especially grateful to our staff for their valuable input and assistance—much of which was done on their own time. Their dedication to the agency and its constituents is a model of public service.

This edition is available in both interactive (HTML) and printer-friendly (PDF) formats. For more information, please visit the Commission's web site at www.mass.gov/lrc.

Commonwealth of Massachusetts
Labor Relations Commission

Helen A. Moreschi, *Chairwoman*
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Boston, Massachusetts
November, 2002

EVOLUTION OF PUBLIC EMPLOYEE COLLECTIVE BARGAINING

1935

The Wagner Act (National Labor Relations Act) is enacted, granting collective bargaining rights to private sector employees in companies engaged in interstate commerce.

1937

M.G.L. c. 150A, a so-called "Baby Wagner Act," is enacted, extending bargaining rights to private sector employees within the Commonwealth. The Labor Relations Commission is established to administer the new law. M.G.L. c.23, §9O, *et seq*.

1958

All public employees (except police officers) in Massachusetts are granted the right to join unions and to "present proposals" to public employers. M.G.L. c. 149, § 178D.

1960

M.G.L. c.40, §4C is enacted, giving city and town employees the right to bargain, provided that the local city or town adopts the law. However, there are no specific procedures for elections and no provisions covering the subject matter or method of bargaining.

1962

The Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority, and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority become subject to the representation and unfair labor practice provisions of M.G.L. c. 150A. Section 760 of the Acts of 1962.

1964

State employees are granted the right to bargain with respect to working conditions (but not wages). M.G.L. c.149, §178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective negotiations, that bargaining began.

Chapter 150A is amended to include private health care facilities as "employers" and nurses as "employees."

1965

Municipal employees are granted the right to bargain about wages, hours, and terms and conditions of employment. M.G.L. c.149, §§178G-N (repealing Chapter 40, §4C).

1968

Chapter 150A is amended to expressly include private nonprofit institutions as "employers" and nonprofessional employees of a health care facility or of private nonprofit institutions (except members of religious orders) as "employees."

1969

The Legislature establishes the Mendonca Commission to revise the public employee bargaining laws.

1973

M.G.L. c.150E is enacted, granting full collective bargaining rights to most state and municipal employees.

Binding arbitration of interest disputes is established for police and fire employees. Chapter 1078 of the Acts of 1973.

1974

M.G.L. c.150E is amended to: 1) strengthen the enforcement powers of the Labor Relations Commission; 2) modify union unfair labor practices; and 3) modify the standards for the exclusion of managerial employees.

1975

The Labor Relations Commission issues standards for appropriate bargaining units affecting 55,000 state employees in more than 2,000 job classifications. Ten statewide units are created—five non-professional and five professional.

M.G.L. c.150E is amended to provide for a separate bargaining unit for state police. Chapter 591 of the Acts of 1975.

1977

Chapter 150E is extended to court employees in the judicial branch; two state-wide units are established for judicial branch employees (except court officers in Middlesex and Suffolk Counties). Chapter 278, Section 3 of the Acts of 1977.

The Representation and prohibited practice provisions of M.G.L. c.150E are extended to housing authorities and their employees.

The Joint Labor-Management Committee is established to oversee collective bargaining negotiations and impasses involving municipal police officers or firefighters.

Agency service fee provisions are clarified to require that employee organizations provide a rebate procedure and to indicate which expenditures may be rebated to employees.

1980

"Proposition 2 1/2" is enacted, repealing final and binding arbitration for police and firefighter contract negotiations.

1982

The Labor Relations Commission issues comprehensive regulations setting forth agency service fee procedures, including requirements for unions to collect a fee pursuant to M.G.L. c.150E, §12 and for employees to challenge the amount or validity of the fee.

1983

M.G.L. c.150A is amended to specifically cover private vendors who contract with the state or its political subdivisions to provide certain social and other services.

1986

M.G.L. c.150E is amended to forbid employers from unilaterally changing employees' wages, hours and working conditions until the collective bargaining process (including mediation, fact-finding, and arbitration, if applicable) has been completed.

1987

Interest arbitration is reinstituted for police and firefighter contract negotiations, with arbitration awards subject to funding by the legislative body.

1990

LRC Revises Regulations.

1993

The Education Reform Act of 1993 (Chapter 71 of the Acts of 1993) impacts public employees by making major changes concerning the demotion and dismissal of teachers and principals.

1996

For cases in which the Labor Relations Commission issues a complaint of prohibited practice and orders a hearing, Chapter 151, Section 577 of the Acts of 1996 allows the parties to elect to submit the case to arbitration at any time up to thirty days prior to the commencement of the hearing ordered by the Commission.

1999

LRC Revises Regulations.

2000

LRC Revises Regulations.

FREQUENTLY ASKED QUESTIONS

GENERAL INFORMATION

What does the law do?

The Massachusetts public employee collective bargaining law gives most public employees at the state, county, and municipal levels the right to: (1) form, join, or participate in unions; (2) bargain collectively over terms and conditions of employment; (3) engage in other concerted activities for mutual aid and protection; and (4) refrain from participating in any or all of these activities.

When did the law take effect?

The law was signed on November 26, 1973, and became effective on July 1, 1974.

Who administers the law?

The Massachusetts Labor Relations Commission which has offices at 399 Washington Street, 4th Floor, Boston, Massachusetts 02108.

Who is covered by the law?

State, county and municipal employees in the executive and judicial branches of government and employees of certain Authorities may bargain collectively, with the exception of managerial and confidential employees who are specifically excluded from coverage. Employees may be designated as managerial only if they participate to a substantial degree in the formulation of policy, assist to a substantial degree in collective bargaining, or have a substantial, independent, appellate role in personnel or contract administration. Employees may be designated confidential only if they directly assist and act in a confidential capacity to a person excluded from the Law's coverage.

REPRESENTATION RIGHTS

How do employees select an exclusive bargaining agent?

By majority action. The Labor Relations Commission is authorized to direct an election by secret ballot to determine the exclusive representative whenever (1) one or more employee organizations claim to represent a substantial number of employees in an appropriate unit; (2) an employee organization petitions the Commission alleging that a substantial number of employees wish to be represented by the petitioner; or (3) a substantial number of employees in a bargaining unit allege that the exclusive representative no longer represents a majority of the employees.

Who determines an appropriate bargaining unit and on what basis is the decision made?

The Labor Relations Commission is authorized to determine appropriate bargaining units giving due regard to such criteria as community of interest, efficiency of operations, and safeguarding effective representation.

What rights and obligations does a recognized or certified employee organization have?

The exclusive representative is authorized to negotiate agreements covering all employees in a bargaining unit and must represent all such employees fairly in contract negotiation and administration.

Under what circumstances may an employee organization seek an election?

Generally, an employee organization filing a petition for certification must satisfy the Labor Relations Commission that at least 30% (50% if the employees are currently represented) of the affected employees desire to be represented by that organization.

How will representation disputes be resolved?

An appropriate petition must be filed with the Labor Relations Commission asking that it direct an election to be held. All employees vote in secret and the choice is made by a majority of valid votes cast.

May employees decide to terminate representation by an employee organization or change representatives?

Yes. A petition may be filed with the Labor Relations Commission by or on behalf of a substantial number of employees in a unit alleging that the exclusive representative no longer represents a majority of the employees within the unit and asking that the Labor Relations Commission direct an election to be held to determine the exclusive representative.

Are there specific times during which a representation petition may be filed?

Yes. Generally, the Labor Relations Commission will not entertain a petition during the term of a valid collective bargaining agreement, unless the petition is filed no more than 180 days and no fewer than 150 days (no more than 90 days and no fewer than 60 days for petitions filed pursuant to M.G.L. c.150A) prior to the expiration of the agreement. The Commission will not entertain petitions filed during the first twelve months after an election, certification, and certain voluntary recognition agreements and will not entertain petitions filed by unions within the first six months following the withdrawal of a petition or a disclaimer of interest in the employees.

What is an "agency service fee" and how does it work?

An "agency service fee" is an amount that an employee organization may charge employees in its bargaining unit who are not members of the organization for their proportionate share of the costs of collective bargaining and contract administration. A nonmember who believes the amount of the service fee demanded by the union exceeds that "proportionate share" may file an unfair labor practice charge with the Commission. The fee payer may also challenge the "validity" of the demand on certain grounds set forth in Commission regulations or case law.

THE COLLECTIVE BARGAINING PROCESS

What is collective bargaining?

Collective bargaining is the mutual obligation of employers' and employees' representatives to meet at reasonable times and confer in good faith with respect to wages, hours, standards of productivity and performance, and other terms and conditions of employment, or the negotiation of an agreement, or a question arising under an agreement.

Who may represent the respective parties in the actual bargaining process?

The parties may be represented by a person or persons of their own choosing at the bargaining table.

What if the provisions of the bargaining agreement conflict with applicable law?

If there is a conflict between the provisions of a collective bargaining agreement and certain statutes enumerated in Section 7(d) of the Law, ordinances, by-laws or regulations, the terms of the agreement prevail. The enumerated statutes, etc., deal essentially with wages and/or "working conditions."

Must an employer negotiate with representatives of the bargaining unit?

Yes. The employer and exclusive bargaining representative must, upon demand, negotiate in good faith with respect to wages, hours, standards of productivity and performance, and other terms and conditions of employment. No public employer may exempt itself from the operative provisions of the law.

Is either side required to agree?

No. But both sides must bargain in good faith, and either reach agreement or an impasse. If an agreement is reached, it must be reduced to writing and executed by the parties.

IMPASSE—WHAT THEN?

What if the public employer and labor organization fail to reach an agreement on a new or successor collective bargaining agreement?

The law prohibits public employees from striking. It also prohibits public employers from unilaterally changing terms and conditions of employment. The Board of Conciliation and Arbitration administers procedures for resolving collective bargaining impasses under the public employee collective bargaining law. These procedures comprise mediation, fact-finding and interest arbitration. The Board is located at 399 Washington Street, 5th Floor, Boston, Massachusetts 02108. Impasse resolution services for police and firefighters are provided by the Joint Labor-Management Committee (JLMC), located at One Ashburton Place, 6th Floor, Boston, Massachusetts 02108.

How does the mediation process work?

After a reasonable period of negotiation, the parties acting individually or jointly may petition the Board of Conciliation and Arbitration for the determination of an impasse and the initiation of mediation. Upon receipt of this petition, the Board commences an investigation to determine both if the parties have negotiated for a reasonable period of time and if an impasse exists.

Once an impasse is found, the Board appoints a mediator to assist the parties in reaching agreement. In some instances, the parties themselves agree upon a mediator.

Suppose the parties still cannot agree? Will a neutral third party be brought in to make findings of fact?

If the dispute survives the best efforts of the mediator, the mediator will recommend to the Board of Conciliation and Arbitration that the case be certified to fact-finding when either or both parties have requested fact-finding.

A fact-finder will generally be selected from a list of fact-finders sent to the parties by the Board. If the parties cannot agree, the Board will appoint a fact-finder. The fact-finder's primary responsibility is to preside at fact-finding hearings and issue a written report with recommendations for resolving all issues in dispute. The fact-finder has the authority to mediate the dispute at the request of both parties.

Within thirty days after the appointment, the fact-finder must submit his or her report to the parties and the Board. The recommendations contained in the report are advisory and do not bind the parties. If the impasse remains unresolved ten days after the receipt of the findings, the Board is required to make them public.

After the fact-finding procedure fails to resolve the dispute, what can the parties do?

Normally, if the impasse continues after the publication of the fact-finder's report, the issues in dispute go back to the parties for further bargaining.

The law, however, allows the employer and employee organization to enter into arbitration of contract impasse issues, provided they both agree to do so. This voluntary interest arbitration binds the legislative body only in those cases where the legislative body has agreed in advance to be bound by the arbitrator's award. The parties may agree to any form of arbitration that suits their interest.

What happens if impasse exists with police and firefighters?

Effective March 20, 1988, Chapter 589 of the Acts of 1987 went into effect. This law gives the Joint Labor-Management Committee (JLMC) the power to resolve collective bargaining impasses through interest arbitration awards, which are final and binding on the public employer if they are supported by substantial evidence and are funded by the legislative body. The statute sets forth certain guidelines for determining interest arbitration awards.

What is the Joint Labor Management Committee?

The Committee is composed of twelve members, plus a chairperson and a vice-chairperson. Twelve members are appointed by the governor: three from nominations by firefighter unions, three from nominations by police unions, and six from nominations by the governor's Local Government Advisory Committee. The Joint Committee nominates the chairperson and vice-chairperson. In addition to overseeing police and firefighter negotiations, the Committee may, at its discretion, take jurisdiction in any dispute over the negotiation of the terms of a collective bargaining agreement involving municipal firefighters or police officers.

The Committee or its representatives may meet with the parties to a dispute, conduct formal and informal conferences, and take other steps to encourage the parties to agree on the terms of a contract or procedures to resolve the dispute. Some of these procedures include mediating, monitoring negotiations, conducting hearings, and ordering arbitration. Since the repeal of compulsory binding arbitration by "Proposition 2 1/2," a question exists as to whether the Committee can bind the legislative body of a municipality to honor an agreement when the Committee uses arbitration to resolve a dispute.

Once an agreement is reached, may the parties specify procedures to be used to settle disputes concerning its interpretation?

Yes. The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation of the agreement. If a collective bargaining agreement does not include final and binding grievance arbitration, the Commission may order binding arbitration of any grievance arising under the terms of the agreement upon the request of either party to the agreement.